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CAPITAL ONE BANK (USA), N.A.

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION

CAPITAL ONE BANK (USA), N.A.,

Plaintiff,

v.

EDMUND G. BROWN, JR., in his capacity as
Attorney General of the State of California,

Defendant.

Case No. C08-02289-SC

**PLAINTIFF'S CASE
MANAGEMENT CONFERENCE
STATEMENT; [PROPOSED]
ORDER**

Date: August 15, 2006
Time: 10:00 a.m.
Department: 1
Judge: Hon. Samuel Conti

Complaint Filed: May 2, 2008
Trial Date: TBA

1 In accordance with Rule 26(f) of the Federal Rules of Civil Procedure and Civil Local
2 Rule 16-9, Plaintiff Capital One Bank (USA), N.A. ("COBNA") submits this initial Case
3 Management Statement and Proposed Order.

4 INTRODUCTION

5 1. Procedural Introduction

6 Having advised Defendant Edmund G. Brown, Jr., in his capacity as Attorney General of
7 the State of California (the "Attorney General"), of the nature of its claims, and unable to resolve
8 the issues, Plaintiff Capital One Bank (USA), N.A. the complaint in this case on May 2, 2008.

9 Defendant has not yet been served. Pursuant to Federal Rule of Civil Procedure 4(m),
10 Plaintiff has 120 days, or until September 2, 2008, to serve Defendant. COBNA requests that the
11 Court set a further Case Management Conference for October 10, 2008 at 10:00 a.m., by which
12 time Defendant will have been served. COBNA further requests that the Court approve a 60-day
13 extension of time in which Defendant can respond to complaint once it is served. Such extension
14 would permit the parties to continue to attempt to resolve their differences without burdening the
15 Court with motion practice.

16 CASE MANAGEMENT CONFERENCE DATE

17 The initial Case Management Conference in this matter is currently set for August 15,
18 2008.

19 DESCRIPTION OF THE CASE

20 1. Brief Description of the Events Underlying the Action

21 On or about November 13, 2006, the Attorney General demanded that "Capital One"
22 produce books and records concerning and interviews with employees knowledgeable about
23 various banking practices of Plaintiff. The subjects on which interviews and documents were
24 requested included solicitation of credit card account applications mentioning balance transfers,
25 issuance of credit cards on reaffirmation of preexisting debt, and account closing practices.

26 At the time of the Attorney General's demand, the only affiliates of Capital One Financial
27 Corporation that had theretofore offered credit card accounts to U.S. residents were Capital One
28 Bank and Capital One, F.S.B. a federally chartered savings bank. On July 1, 2007, Capital One,

1 F.S.B. merged into Capital One, N.A., a national bank. Capital One, F.S.B.'s credit card
2 receivables relating to "Capital One" credit card accounts and associated records were transferred
3 to Capital One Bank. As of March 1, 2008, Capital One Bank has converted to Capital One Bank
4 (USA), N.A., a national banking association organized under the National Bank Act. All credit
5 card accounts established with the "Capital One" mark and their related records – whether opened
6 with Capital One Bank, Capital One, F.S.B. or with Capital One Bank (USA) N.A. – are currently
7 held by Plaintiff.

8 The Attorney General made further requests for documents and information regarding
9 Plaintiff's credit card lending in January 2007 and through April 2008. COBNA engaged in
10 discussions with the Attorney General in an effort to understand the nature of any specific
11 business practices of concern, to work with the Attorney General to narrow the scope of the
12 requests. COBNA has provided nearly 4,000 pages of documents responsive to the Attorney
13 General's demands, as well as a number of narrative descriptions of certain credit card practices.

14 On March 18, 2008, COBNA advised the Attorney General of its charter conversion, and
15 explained that the OCC now exercises complete and exclusive visitorial powers over Plaintiff,
16 which include the ability to inspect Plaintiff's books and records and to enforce Plaintiff's
17 compliance with applicable federal and state laws concerning its banking practices. On April 8,
18 2008, the Attorney General responded by letter, making additional demands for inspection of
19 Plaintiff's books and records regarding its exercise of its banking powers. On May 2, 2008, the
20 Attorney General declined to withdraw its demands for inspection, and COBNA filed this
21 complaint.

22 COBNA brings this action to require the Attorney General to comply with long-
23 established federal law. The Attorney General seeks to exercise rights of "visitation" over
24 Plaintiff by demanding that Plaintiff respond to information requests directed at whether their
25 credit card marketing, advertising, issuing, servicing, and related banking practices violate
26 California or federal law. Plaintiff is a national bank, and as such is an instrumentality of the
27 federal government, authorized under the National Bank Act (12 U.S.C. §§ 21 *et seq.*) to exercise
28 enumerated and incidental powers related to the business of banking. Plaintiff is subject to the

1 exclusive visitorial power of the Office of the Comptroller of the Currency (“OCC”) under the
2 Visitorial Powers Statute, 12 U.S.C. § 484. “Visitorial powers” include the power to examine
3 books and records of a national bank, as well as the power to enforce a national bank’s
4 compliance with applicable law in the exercise of its federally authorized banking functions.

5 **2. Principal Factual Issues Disputed by the Parties**

6 None at this time.

7 **3. Principal Legal Issues Disputed by the Parties**

- 8 a) Can the Attorney General exercise rights of “visitation” over a national
9 bank by demanding that COBNA respond to information requests directed
10 at whether its credit card marketing, advertising, issuing, servicing, and
11 related banking practices violate California or federal law?
12 b) Is COBNA entitled to declaratory relief?
13 c) Is COBNA entitled to permanent injunctive relief against Defendant?
14 d) Is COBNA entitled to recover its attorneys’ fees and costs?

15 **4. Parties Not Served**

16 Defendant Edmund G. Brown, Jr., in his capacity as Attorney General of the State of
17 California, has not yet been served. While Plaintiff did not formally serve Defendant, it did
18 provide Defendant with a courtesy copy of the complaint. Plaintiff filed this complaint on May 2,
19 2008. Pursuant to Federal Rule of Civil Procedure 4(m), Plaintiff has 120 days, or until
20 September 2, 2008, to serve Defendant.

21 **5. Additional Parties**

22 COBNA has no additional parties to add at this time, but reserves the right to amend the
23 complaint in light of discovery.

24 **6. Additional Claims**

25 COBNA has no additional claims at this time, but reserves the right to amend its
26 complaint in light of discovery.

27 **7. Consent to Assignment to Magistrate Judge**

28 COBNA does not consent to assignment to a Magistrate Judge.

8. Alternative Dispute Resolution

Pursuant to Civil Local Rule 16-8(b), the undersigned certifies that he has read the brochure entitled “Dispute Resolution Procedures in the Northern District of California,” discussed the available dispute resolution options provided by the Court and private entities with Plaintiff; and considered whether this case might benefit from any of the available dispute resolution options. COBNA does not believe this case is suitable for Alternative Dispute Resolution.

DISCLOSURES

9. Initial Disclosures

COBNA will provide Defendant with its initial disclosures pursuant to the timeline set forth in Federal Rule of Civil Procedure 26(a)(1)(C).

DISCOVERY

10. Discovery Plan

COBNA and Defendant have engaged in pre-litigation discovery pursuant to California Government Code section 11180 *et seq.* COBNA has provided Defendant with nearly 4,000 pages of documents as well as oral and written narrative responses to requests for information from Defendant.

COBNA submits the following discovery proposal:

- a) **Scope of Discovery:** COBNA anticipates full use of all the tools of discovery in this matter.
- b) **Party depositions:** COBNA proposes 6 depositions per side.
- c) **Interrogatories:** COBNA proposes 30 interrogatories per side, reserving the right to seek leave of court if more interrogatories are needed.
- d) **Requests for Production of Documents:** COBNA proposes no limits on the number of Requests for Production of Documents per side.
- e) **Request for Admissions:** COBNA proposes no limits on the number of Requests for Admission per side.

f) **Entry of a Protective Order:** COBNA believes that a protective order governing confidentiality in this action will be needed before it produces confidential documents.

DISCOVERY AND TRIAL SCHEDULE

COBNA requests a May 4, 2009 trial date, and estimates that the trial will take three court days. COBNA proposes the following discovery and trial schedule:

Event	Applicable Rule	Proposed Date
Service of Complaint on Defendant	Fed. R. Civ. P. 4(m)	September 2, 2008
Federal Rule of Civil Procedure 26(f) Conference	Fed. R. Civ. P. 26(f)(1)	September 19, 2008
Last Day to File Joint Case Management Statement	Fed. R. Civ. P. 26(f)(2)	October 3, 2008
Last Day to Serve Federal Rule of Civil Procedure 26(a) Initial Disclosures	Fed. R. Civ. P. 26(a)(1)(C)	October 3, 2008
Case Management Conference		October 10, 2008
Close of Fact Discovery		January 9, 2009
Initial Expert Reports	Fed. R. Civ. P. 26(a)(2)(C)(i)	February 3, 2009
Rebuttal Expert Reports	Fed. R. Civ. P. 26(a)(2)(C)(ii)	March 5, 2009
Close of Expert Discovery		March 5, 2009
Last Day to File Dispositive Motions	Civil Local Rule 7-2	April 10, 2009
Last Day to Provide a Draft Pretrial Order	Civil Local Rule 16-10(d)	April 21, 2009
Final Pretrial Conference and Hearing Regarding Motions in Limine		May 1, 2009

Event	Applicable Rule	Proposed Date
Trial		May 4, 2009

Dated: August 14, 2008

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By: /s/ James F. McCabe
James F. McCabe

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CAPITAL ONE BANK (USA), N.A.

CASE MANAGEMENT ORDER

A further Case Management Conference is set for October 10, 2008 at 10:00 a.m. before this Court. The parties are ordered to file a Joint Case Management Statement no later than October 3, 2008. The Court hereby approves a 60-day extension of time in which Defendant can respond to complaint once it is served.

Dated: _____

Senior Judge Samuel Conti
United States District Court